

## **Minutes of Special and Regular Meeting of November 10, 2009**

City Council Chambers, One Twin Pines Lane, and Teleconference Location (Feierbach)  
Palazzo Resort-Hotel 3325 Las Vegas Boulevard South, Las Vegas, Nevada

### **SPECIAL MEETINGS**

#### **CLOSED SESSION - 6:05 P.M.**

- A. Conference regarding Public Employee Appointment Pursuant to Government Code Section 54957: City Manager
- B. Conference with Legal Counsel pursuant to Government Code Section 54956.9, Anticipated Litigation, Significant Exposure to Litigation, one case
- C. Conference with Real Property Negotiator Crist pursuant to Government Code Section 54956.8: APN 044-222-170 and APN's 043-021-380, 043-021-010, 043-072-010, 043-072-030, 043-030-120, 043-030-320 through 500, 043-042-180, 043-042-580 through 600, 043-042-630 through 690, 043-061-290, 043-061-400, 043-061-580 through 810, 043-062-010, 043-062-160 through 200, and 043-062-480 through 670)

Attended by Councilmembers Feierbach (via teleconference), Dickenson, Wozniak, Lieberman, Braunstein, City Manager Crist, City Attorney Zafferano, Finance Director Fil, Community Development Director de Melo, Human Resources Director Dino, Interim Public Works Director Borrmann, and Special Counsel Cobey. City Clerk Cook was excused from attending.

**ADJOURNMENT** at this time, being 7:30 P.M.

**Terri**

**Cook**

**City Clerk**

This meeting was not tape recorded or videotaped.

### **REGULAR MEETING**

#### **CALL TO ORDER 7:40 P.M.**

#### **ROLL CALL**

COUNCILMEMBERS PRESENT: Feierbach (attended partial meeting via teleconference), Lieberman, Dickenson, Wozniak, Braunstein

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Crist, City Attorney Zafferano, Human Resources Director Dino, Interim Public Works Director Borrmann, Police Chief Mattei, Finance Director Fil, Parks and Recreation Director Gervais, Senior Planner DiDonato, Project Manager Mittelstadt, City Treasurer Violet, and City Clerk Cook.

#### **PLEDGE OF ALLEGIANCE**

Led by member of Boy Scout Troop 301.

#### **REPORT FROM CLOSED SESSION**

City Attorney Zafferano stated that direction was given but no action taken on the Closed Session held earlier.

## **SPECIAL PRESENTATIONS**

### **Contribution from Oracle and the Chamber of Commerce to Belmont Safe Schools**

Police Chief Mattei acknowledged a \$6,000 contribution from Oracle Corporation and the Belmont Chamber of Commerce for the Belmont Safe Schools Program. He noted that these two organizations have made cumulative contributions of approximately \$23,000 since the inception of the program.

**Lenore Griffin**, Belmont Chamber of Commerce, presented a check to Police Chief Mattei.

## **PUBLIC COMMENTS AND ANNOUNCEMENTS**

**Kathleen Beasley**, Belmont Library, outlined upcoming programs to be held at the Library.

## **COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS**

Mayor Braunstein congratulated Councilmembers Lieberman and Feierbach for being re-elected, as well as Council-elect Dave Warden. He noted that the Council reorganization meeting would be held on December 8<sup>th</sup>. He also announced that City Hall would be closed on November 11<sup>th</sup> in observance of Veteran's Day. The City will sponsor a Holiday Boutique during the weekend of November 21<sup>st</sup>.

## **AGENDA AMENDMENTS**

Mayor Braunstein announced that at the request of the applicant, the Preliminary Design Review for Talbryn Drive (Item 6-A) would not be heard this evening.

Councilmember Wozniak requested the removal of Consent Item 4-B (Written Communication) for separate consideration.

## **ITEMS APPROVED ON CONSENT CALENDAR**

**Approval of** Minutes of Special Joint Meeting with the Belmont-Redwood Shores School District of September 29, 2009, and Special and Regular Meeting of October 13, 2009

**Approval of** Resolution 10184 Accepting Work, Approving As-Built Plans, and Authorization to Issue a Notice of Substantial Completion for the Hastings Drive Sewer Pump Station Rehabilitation Project, City Contract Number 486

**Approval of** Resolution 10185 Authorizing the City Manager of the City of Belmont to Apply for American Recovery and Reinvestment Act of 2009, Energy Efficiency and Conservation Block Grant Program Funds in the Amount of \$134,182

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Lieberman, the Consent Agenda was unanimously approved by a show of hands (4-0, Feierbach absent).

## **ITEMS REMOVED FROM CONSENT CALENDAR FOR SEPARATE CONSIDERATION**

**Written Communications: CPUC Application Filing by PG&E for Expedited Authorization to Change Residential Electric Rates Effective Jan. 1, 2010, as Permitted by the Newly Enacted Public Utilities Code Section 739.9**

Councilmember Wozniak noted that this hearing notice represented another rate increase for PG&E. She expressed concerns regarding the accumulative effect of rate increases on PG&E customers.

**ACTION:** On a motion by Councilmember Wozniak, seconded by Councilmember Dickenson, and unanimously approved by a show of hands (4-0, Feierbach absent) to accept Written Communication: CPUC Application Filing by PG&E.

## **HEARINGS**

**Public Hearing to Consider an Urgency Ordinance Pursuant to Government Code Section 65858(A) Imposing a Moratorium on New Billboard Structures Within the City of Belmont**

City Attorney Zafferano explained that what is being proposed is a temporary moratorium for new billboards. He outlined the background of this issue and what is driving the need for this moratorium. He noted that staff and the Planning Commission have been working on revisions to the City's sign ordinance over the past several months. It is expected that the City Council will be asked to take action on the revisions in early 2010.

City Attorney Zafferano outlined recent lawsuits in neighboring cities resulting from new billboard applications. He noted that although new billboards are prohibited by existing zoning codes in those cities, the Federal District Court has upheld an applicant's request, and these cities have been ordered to process the application. He clarified that the proposed moratorium would affect only new billboard structures, and no applications are currently pending. He further clarified that the moratorium does not affect any other types of signs.

City Attorney Zafferano noted that the urgency ordinance requires a four-fifths vote, and the moratorium is effective for 45 days. He clarified this would not be sufficient time to bring an amended sign ordinance to the Council for approval, and the moratorium could be extended at a future hearing.

In response to Council questions, City Attorney Zafferano outlined the process for an application for a new billboard, but clarified that Belmont's existing zoning code prohibits new billboard applications. He also clarified that the recent court challenge was not specifically related to billboards, but to other components of Belmont's existing ordinance, including definitions. He stated that there are infirmities in the existing ordinance which will be cured with the future revisions. He noted that the City of San Carlos recently enacted a similar moratorium.

Mayor Braunstein opened the Public Hearing.

**Lenore Griffin**, Belmont Chamber of Commerce, expressed support for the urgency ordinance. She requested clarification regarding whether or not a property owner could install a new billboard on his or her own property, and she requested that the Chamber of Commerce be contacted regarding revisions to the sign ordinance.

City Attorney Zafferano explained that no new billboards are allowed under current zoning regulations. He clarified that the definition of billboard is different from that of other types of signs. He noted that now is the appropriate time to do outreach regarding proposed revisions to the sign ordinance.

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Wozniak, the Public Hearing was unanimously closed by a show of hands (4-0, Feierbach absent).

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Wozniak, Ordinance 1046 Imposing a Moratorium on New Billboard Structures Within the City of Belmont was unanimously approved by a show of hands (4-0, Feierbach absent).

City Attorney Zafferano explained that an urgency ordinance, if enacted, goes into effect immediately and does not require a second reading and adoption at a subsequent meeting, as other ordinance adoptions do.

## **OLD BUSINESS**

### **Preliminary Design Review - Four lot subdivision 1320 Talbryn Drive**

As previously noted, this item was tabled at the request of the applicant.

### **Preliminary Design Review for a Single Family Residence; Application No: 2008-0022. Location: Vacant Lot on Alhambra Drive, Lot 8 of Block 114 of the Belmont Country Club subdivision**

Senior Planner DiDonato described the property and the purpose of the preliminary design review process. He outlined the issues to be addressed, including the proposed abandonment of right-of-way. He clarified that the proposed project meets development criteria, but will require additional detailed design review by the Planning Commission. He noted that any input from the City Council this evening is nonbinding.

**Jeff Rice**, Architect on behalf of the owner, stated that in addition to the request for abandonment of right-of-way in order to accommodate better siting of the building, the applicant will request a waiver of the five-foot utility easement requirement. He clarified that letters of approval from all the utilities have been received.

**Eugene Tan**, Applicant/Owner, stated that he is seeking a new home for his family.

**Tim Robertson**, Belmont resident, expressed his opposition to the proposal. He noted that existing HRO (Hillside Residential Open Space) regulations discourages grading and requires a larger lot to accommodate a home. He explained this is a steep lot with a 48 percent slope. He expressed concerns regarding erosion, tree removal, loss of views, and maintenance of the right-of-way if abandoned by the City. He noted that there are other homes available for sale in the neighborhood if the applicant desires to live there. He prefers that the lot remain undeveloped.

In response to Council questions, Senior Planner DiDonato described the differences in the amount of grading from the original proposal to the current proposal. He noted that the current proposal will require less grading. He also described the floor area transfer option available

through the existing San Juan Canyon Plan. Community Development Director de Melo clarified that the floor area transfer process is available for HRO-2 properties, not HRO-1, which is the zoning of Mr. Tan's property. Senior Planner DiDonato stated that slopes of adjacent properties have not yet been analyzed, but will be once a formal application is submitted. The proposed home will not exceed the 28-foot limit. Erosion will be addressed during the formal application process through a geotechnical report.

Discussion ensued regarding floor area as it relates to HRO-1 and HRO-2 properties.

Councilmember Lieberman expressed support for the vacation of right-of-way due to the fact that if the right-of-way is not abandoned, the home siting would be farther up the hill, which is less desirable for the neighbors. He recommended working with the neighbors on the other issues.

Councilmember Dickenson expressed concern regarding having neighbors design someone else's home. He does not support the vacation of right-of-way as it could set a precedent and would be a gift of a large amount of public land. He noted that the City has no view protection or solar domain ordinances in effect at this time.

Councilmember Wozniak noted that no entitlements are being sought. She expressed her discomfort in vacating right-of-way, and is unsure of her support for the project in general. She stated she could support the right-of-way vacation if the project moves forward, and that the home would need to be redesigned closer to the street if the vacation does not occur.

Senior Planner DiDonato clarified that the initial proposal included many retaining walls, a higher amount of grading, and other entitlement needs. He noted that there are other large homes in the neighborhood, although the proposed home could be reduced in size.

Mayor Braunstein expressed concern regarding the need for additional grading, tree removal and retaining walls that would be required if the right-of-way is not vacated. He expressed support for the vacation as a means of reducing the impact of the development. He stated that he trusts the Planning Commission to flush out the details.

Councilmember Wozniak stated that a house can be built on this site, but the proposed home is not a hillside house. She looks forward to reviewing the future geotechnical reports for this site.

Council concurred that it had no issue regarding the waiver of the utility easement requirement.

**Consideration of a 10-Year Collection Services Franchise Agreement with Recology of San Mateo County, Inc. for Collection Services of Recyclable Materials, Organic Materials and Solid Waste**

City Manager Crist provided a review of a draft of a new ten-year franchise agreement for solid waste. He explained that the South Bay Waste Management Authority's (SBWMA) model agreement was used as a base. He noted that staff was close to a final agreement, but feedback was needed from the City Council on a number of specific items. He clarified that an annual Proposition 218 process would be utilized for annual garbage rates.

**Michael Brown**, Solid Waste Consultant, outlined the progress and agreements that have been made on issues previously discussed by the City Council. He explained that with regard to rate capping, the vendor does not set the rates, the cities do. He noted that Recology has agreed that after five years the City could elect to switch to the SBWMA rate formula. He clarified that Recology's labor rates are linked to the national employment index, which is likely to be lower than the City's rates. He stated that Recology has not agreed to billing in arrears due to bad debt issues, and clarified that changing the billing process could result in higher rates.

**Mark Garston**, Recology General Manager, explained the quarterly billing process, and noted that due to timing issues, this does not result in a three-month advance payment. He stated that the billing cycle would remain the same as it is under the current franchise agreement. Bad debts are the result of the current economy.

Consultant Brown reviewed the franchisee payments to the City, which results in an increase of two percent compared with current payments. He noted that Recology has agreed to pay any shortfall that may exist at the end of the current franchise agreement. Cost recovery and the reuse of organic carts and commercial bins would be built into the trash rates. He explained that there is no need to replace those that are in good condition as they can be refurbished. He outlined the rate setting process and how it will differ from the existing process. He reviewed the proposed rate structure options. He noted that all residential customers would need a new trash cart and recycle cart.

Consultant Brown reviewed the commercial rate structure. He noted that most businesses in Belmont are small, and the progressive rate structure rewards recycling and the use of smaller carts. He reviewed the annual adjustment factors, which include a rate stabilization fund for future unknown issues. He noted that attempts have been made to keep future rates similar to those that will be proposed for 2010, but that there would be a need to true up in 2012 to compensate. He noted that the Infrastructure Committee discussed this matter.

Councilmember Wozniak expressed support for progressive rates to encourage recycling.

Councilmember Lieberman concurred, and also expressed support for waiving the household waste disposal fee for low-end users.

**Mark Mandel**, Special Counsel, stated that it is unknown whether or not trash fees are subject to the Proposition 218 process, as that process is intended for property-related fees. He noted that since residents are mandated to use the system and the City sets the fees, the recommendation is to follow the provisions of Proposition 218. He further clarified that the annual rate setting process under Proposition 218 would be followed, even after the franchise agreement is in place.

**Mary Morrissey-Parden**, Belmont Chamber of Commerce, expressed support for Recology as Belmont's franchisee. She expressed concern that the next City Council meeting is too soon to take action on this franchise agreement. Commercial clients desire equity in rates as compared to other cities, and the Chamber would like more input on this matter. More information is needed regarding rate capping, and outreach is needed for multi-unit housing. She suggested that 32 to

40-gallon cans be available as an option for commercial customers. She requested clarification as to what happens to the rate stabilization funds at the end of the franchise agreement.

City Manager Crist noted that staff has been working with Recology for several weeks regarding the details of the franchise agreement, and this is the opportunity for public outreach.

Consultant Brown clarified that the City of Belmont is the last to be taking action on its franchise agreement. Time is of the essence, as new trucks need to be ordered.

Councilmember Dickenson expressed concerns regarding current cardboard and holiday tree collection practices. He recommended quarterly special pickup services. He also expressed concerns regarding customer service needs for both residential and commercial customers. He expressed support for the inclusion of trash pickup at City-owned sites, as well as abandoned waste collection. He suggested exploring the option of having Recology operate the street sweeping program. He also supports the progressive rate method, and that those with 20-gallon containers should also pay for the household waste program.

Mayor Braunstein expressed support for the household waste program and progressive rates.

Councilmember Lieberman expressed support for the option to switch to the SBWMA model rate structure, and suggested that it be a one-time event at any time during the life of the agreement.

**RECESS: 9:55 P.M.**  
**RECONVENE: 10:05 P.M.**

(Councilmember Feierbach joined the meeting via teleconference.)

**Resolution Approving Acquisition of Lands in the San Juan Canyon (87 Parcels, APN's 043-021-380, 043-021-010, 043-072-010, 043-072-030, 043-030-120, 043-030-320 through 500, 043-042-180, 043-042-580 through 600, 043-042-630 through 690, 043-061-290, 043-061-400, 043-061-580 through 810, 043-062-010, 043-062-160 through 200, and 043-062-480 through 670)**

City Manager Crist described the auction that was held for these properties in the San Juan Canyon. He noted that a recent appraisal supports the minimum bid that was offered by the City, and that bridge financing has been obtained. He stated that a payment is due on November 16<sup>th</sup>, which requires Council action prior. He explained that some of the acquired lots could be sold off at a later date to offset the cost of the purchase.

Finance Director Fil noted that the property is divided into four parcel groups, and staff recently learned of a tax lien on one of the groups. He noted that the property taxes and fees exceed the original authority granted by the City Council for the entire purchase. He outlined cost details and funding sources, and clarified that no General Fund monies would be used.

Parks and Recreation Director Gervais stated that it has been a long-standing goal of the City to acquire open space in the San Juan Canyon. He noted that much of the property is steep, and

interconnects with other existing open space areas in the region. The cost to develop some of these properties would be high due to infrastructure needs and landslide issues. He noted this is an important natural resource that would create a greenbelt. He described previous open space acquisitions of the City. He described the potential uses for vacant properties in the area as outlined in the Parks and Open Space Master Plan, including a potential developed park off Bishop Road.

Community Development Director de Melo stated that development opportunities exist on some of the parcels located on Marsten Avenue and Bishop Road, which are improved streets.

**MEETING EXTENSION** at this time, being 10:25 P.M. on a motion by Councilmember Dickenson, seconded by Councilmember Lieberman, and unanimously approved by a show of hands and a verbal approval of Councilmember Feierbach (via phone) to extend the meeting by 30 minutes.

Councilmember Wozniak expressed concerns regarding the impact that a developed park site on Bishop Road would have on the surrounding area. She noted that all of these parcels are the most valuable land in Belmont, and those identified for future sale would likely result in more revenue than outlined by staff.

Community Development Director de Melo clarified that details regarding potential subdivisions would need to be worked out, and would likely fund a significant portion of the cost of the acquisition.

Councilmember Feierbach stated that she has tried to save the San Juan Canyon for many years. She recommended eliminating the parcels contained in Group 6, which include the tax lien. This could result in the need to sell fewer lots. She stated that the County is not likely to ever receive the back taxes on this property, and recommended waiting to acquire those properties at a later date. She cannot support any developed park in this region, and noted that the Master Plan is an old document

**Warren Gibson**, Belmont resident, concurred with Councilmember Feierbach regarding the elimination of the Group 6 parcels. He noted that the sale of some of these properties could be imminent, since many have been on the market. He noted that there may be private donation sources available, including the San Juan Canyon Trust. He also expressed concern that residents may be unaware of this large purchase of land with tax dollars, and suggested postponing this matter for further input.

Community Development Director de Melo described the Agape subdivision on Bishop Road, and noted that one property is ready for a building permit. He described the acquisition of park-in-lieu fees, and clarified that these monies are received when the lots are sold, not when they are developed.

In response to Councilmember Lieberman, Parks and Recreation Director Gervais described the trail connections that the Group 6 parcels provide.



Discussion ensued regarding trail connections.

Councilmember Lieberman expressed concern regarding the loss of interconnectivity if Group 6 parcels are not acquired.

**MEETING EXTENSION** at this time, being 10:55 P.M. on a motion by Councilmember Dickenson, seconded by Councilmember Lieberman, and unanimously approved by a show of hands and a verbal approval of Councilmember Feierbach (via phone) to extend the meeting by 30 minutes.

Councilmember Wozniak expressed support for the purchase of all parcels. She noted that the City is likely to recoup all of its costs.

Councilmember Dickenson expressed concern regarding the tax lien, and stated he supports eliminating Group 6 from the purchase.

Mayor Braunstein stated that years ago the City of Belmont had the opportunity acquire the Redwood Shores property, but declined, and that property is now worth a great deal of money. He noted that these San Juan parcels would be acquired at \$40,000 an acre, and the total price is a small amount over the original authority of the City Council. There is value added for the community in acquiring the property. He expressed concerns regarding the future ability to acquire Group 6 if it is declined at this time.

Councilmember Dickenson stated that the Redwood Shores property cannot be compared with the San Juan property.

Councilmember Lieberman recommended making the acquisition contingent on the future sale of some parcels. He stated that removal of Group 6 would unravel the entire purchase.

Councilmember Feierbach suggested continuing this matter for additional discussion.

City Attorney Zafferano noted that a check must be delivered to the US Marshal's office by November 16<sup>th</sup>. He expressed concern regarding the ability to continue this matter and still meet that deadline.

Discussion ensued regarding logistical and timing issues.

Council concurred to continue this matter to a special meeting on November 12, 2009, at 5:00 p.m.

(At this time, being 11:15 P.M., Councilmember Feierbach disconnected from the teleconference.)

**RECESS: 11:15 P.M. (to consider Redevelopment Agency agenda)**  
**RECONVENE: 11:22 P.M.**

**COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL  
ASSIGNMENT UPDATES, AND STAFF ITEMS**

**Verbal report from Councilmembers on Intergovernmental (IGR) and Subcommittee  
Assignments**

Councilmember Wozniak stated that the new solid waste agreement was discussed at a recent Infrastructure Committee Meeting. She also attended a San Mateo County Library meeting and two meetings on High-Speed Rail

Councilmember Dickenson noted that the Highway 101 landscaping project will be going to bid in December. He noted that a resolution regarding the State's water diversion plans would be forthcoming at the November 24<sup>th</sup> Council meeting.

**Verbal Report from City Manager**

City Manager Crist noted that Carlmont High School would be hosting a night football game on November 13<sup>th</sup>, and that City Hall would be closed on November 11<sup>th</sup> for the Veteran's Day Holiday.

**ADJOURNMENT** at this time, being 11:30 P.M.

**Cook**

**Terri**

**City Clerk**

Meeting Tape Recorded and Videotaped  
Audio Recording 740